IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.387 OF 2006

IN

SUMMARY SUIT NO.1990 OF 2006

M/s.R.D.Enterprise ...Plaintiff.

vs.

1. M/s.Anar International & another. ...Defendants.

Mr.S.V.Rajeshwar i/b. M/s.Leega Apex, for Plaintiff.

Mr.Ranjit Shetty, for Defendant no.1.

Mr.J.Desai i/b. M/s.Singh & Co., for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 6th December, 2006.

P.C.:-

1. The plaintiff has filed the suit for recovery of price of the goods that were supplied by the plaintiff to the defendant no.1. It appears that the goods were initially supplied by defendant no.2 to the plaintiff. The plaintiff had found the goods defective and therefore, the goods were dispatched by the plaintiff to defendant no.2. The plaintiff

was, because the goods were returned, entitled for the price of the goods from defendant no.2. The defendant no.2 however informed the plaintiff that the defendant no.2 is supplying the goods to the defendant no.1 and the price of the goods would be paid by the defendant no.1. The defendant no.1 accordingly, has paid part of the amount to the plaintiff. The dispute is about payment of Rs.14,30,000/- against the part of the amount due. The plaintiff relies on the communication dated 7.4.2004 from the defendant no.1 to the plaintiff that they will make payment of the amount within a period of 40 days from 7.4.2004. According to the defendant no.1 however, the goods which are the subject matter of the letter dated 7.4.2004 are not actually received by the defendant no.1 from the defendant no.2. According to the defendant no.1 he wrote letter dated 7.4.2004 because the Associate of the defendant no.2 assured the defendant no.1 that the defendant no.1 would receive the supply of goods and relying on that assurance the letter dated 7.4.2004 was addressed.

2. Now there is no dispute between the plaintiff and defendant no.1 that if the plaintiff is able to show that the defendant no.1 has received goods then the defendant no.1 would be liable to pay the amount i.e. the price of those goods to the plaintiff. The plaintiff has produced the document which establishes that the goods were received by the defendant no.2. The question is whether the goods

were actually received by defendant no.1 from defendant no.2 or its associate. By letter dated 18.3.2004 the defendant no.1 had assured the plaintiff that the defendant no.1 will make payment on receiving the goods. The letter dated 18.3.2003 reads as under:-

> "We hereby confirm that we will make payment by cheque in Mumbai for 6.5 metric tons of Pigment Blue 15:1 for Rs.14,30,000/- to you against supply of above from M/s.Greeva within 40 days from the date of delivery of above to us."

Thus, by this letter the defendant no.1 made promise to the plaintiff that on receiving the goods from defendant no.2 payment would be made by the defendant no.1 to the plaintiff within a period of 40 days from the delivery of the goods to the defendant no.1. This letter establishes a clear privity of contract between defendant no.1 and plaintiff. Then, on 7.4.2004 the defendant no.1 addressed a letter to the plaintiff which reads as under:-

> "We hereby confirm that we will make payment by cheque payable in Mumbai for 6.5 metric tons of Pigment Blue 15:1 for Rs.14,30,000/- to you against supply of above from M/s.Greeva within 40 days from today."

Reading these two letters together i.e. one letter dated 18.3.2004 and

another letter dated 7.4.2004 shows that when the letter dated 7.4.04 was written the defendant no.1 had received the goods. Otherwise there was no reason for defendant no.1 to say that they will make payment within 40 days from 7.4.2004. What is pertinent to note is that for part supply, the payment of Rs.5,50,000/- has actually been made by the defendant no.1 to the plaintiff on 26.5.2004. On the basis of the letter dated 7.4.2004 and the fact that even according to the defendant no.1 he has received the part supply, only one conclusion can be reached that is. on 7.4.2004 the defendant no.1 had received the goods. In any case the burden now entirely shifted on defendant no.1 to show that though he had written a letter dated 7.4.2004 the defendant no.2 did not actually deliver the goods to him. Nothing is produced by the defendant no.1 on record to show that he did not receive full quantity of the goods on 7.4.2004. The explanation of the defendant no.1 that he has written letter dated 7.4.2004 in good faith and believing the assurance of the associate of the defendant no.2 that the goods would be delivered, cannot be accepted. If the defendant no.1 was believing the statements made and the promises made by the defendant no.2 and its associates and had promised that the payment would be made within 40 days, then the payment could have been made in March,2003 itself because it is clear from the communication dated 18.3.2004 that the defendant no.1 had received instructions from defendant no.2 that they will supply goods to defendant no.1 and the

defendant no.1 would make payment to the plaintiff. If the defendant no.1 had faith in the assurance given by the defendant no.2 then he would not have said in the letter dated 18.3.2004 that he will make payment within 40 days on actually receiving the goods.

3. Taking overall view of the matter therefore, it becomes clear that defendant no.1 has actually received full quantity of the goods and he is trying to put up the defence only to avoid making payment. In short , the defendant no.1 has no defence to offer.

4. So far as defendant no.2 is concerned, the plaintiff is not claiming any decree against defendant no.2. As the defendant no.1 is not entitled to leave to defend the suit, the plaintiff is entitled to a decree. The summons for judgment is granted. Suit o the plaintiff is decreed in terms of prayer clause (a) of the suit. It is clarified that the suit is decreed only against defendant no.1. Refund of court fees as per rules.